

## Message Text

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ACTION OPIC-06

INFO OCT-01 EA-09 ISO-00 EB-07 COME-00 TRSE-00 CIAE-00  
INR-07 NSAE-00 /030 W  
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R 170521Z JAN 77  
FM AMEMBASSY TAIPEI  
TO SECSTATE WASHDC 2263

UNCLAS SECTION 1 OF 2 TAIPEI 0270

E.O. 11652: N/A  
TAGS: EINV, TW  
SUBJECT: EVALUATION OF TECHNOLOGY TRANSFERS AND CONTRIBUTIONS IN KIND

REF: 76 STATE A-5760

1. TECHNOLOGY TRANSFERS. EMBASSY BELIEVES THAT THE GROC LOOKS FAIRLY CAREFULLY AT THE COST AND NATURE OF TECHNICAL ASSISTANCE OR TECHNOLOGY BEING CONTRIBUTED BY THE INVESTOR. REVIEW PROCEDURE APPEARS GENERALLY TO BE ADEQUATE, STANDARDS ARE HIGH, AND PERSONNEL ARE PROFESSIONAL. THERE IS EVIDENCE THAT OCCASIONALLY THE EXAMINATION OF PROPOSALS FROM THE STANDPOINT OF FINANCIAL SOUNDNESS MAY BE SUPERFICIAL AND/OR RELY TOO HEAVILY ON THE PRESENTATION OF THE APPLICANT IN SETTING A VALUE ON TECHNOLOGICAL CONTRIBUTION. THIS IS PARTICULARLY APT TO BE THE CASE WHERE TECHNOLOGY IS SOPHISTICATED AND/OR GOVERNMENT EXPERTISE IN THE FIELD IS LIMITED. EXAMINERS ARE TEMPTED SIMPLY TO REVIEW PROPOSALS FOR EVIDENCE OF GENERAL SUITABILITY RATHER THAN GOING INTO THEM MORE DEEPLY AND/OR TRYING TO SECOND-GUESS STATE-OF-THE-ART EXPERTS. ON THE WHOLE, HOWEVER, GOVERNMENTAL EVALUATION CAPABILITIES AND THE EXERCISE THEREOF ARE MORE TYPICAL OF AN ADVANCED INDUSTRIAL NATION THAN AN LDC. FURTHERMORE, IT IS NOW THE POLICY OF THE GROC TO (1) ENCOURAGE INVESTMENT IN CAPITAL AND TECHNOLOGY-INTENSIVE INDUSTRIES, (2) EDUCATE ITS WORK FORCE AND BUILD ITS SCIENTIFIC AND INDUSTRIAL RESEARCH BASE TO THE POINT THAT EFFORTS IN  
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STATE-OF-THE-ART AND JUST SHORT OF STATE-OF-THE-ART TECHNOLOGY CAN BECOME SELF-SUSTAINING, (3) TO ENHANCE QUALITY CONTROL AND UPGRADE ITS EXPORT COMMODITIES, (4) WEED OUT INHERENTLY NON-VIABLE INDUSTRIES AND COMPONENTS OF INDUSTRIES VIA TIGHT CREDIT POLICIES AND OTHER NEGATIVE INCENTIVES. ADDITIONALLY, EXPERTISE IN ADVANCED TECHNOLOGY AND ITS UTILIZATION IS GROWING RAPIDLY, AND WITH IT THE ABILITY TO MAKE ACCURATE

JUDGMENTS OF OFFERINGS FROM ABROAD. CONSEQUENTLY, GROC EVALUATION OF PROFERRED TECHNICAL ASSISTANCE/ TECHNOLOGY APPEARS VERY LIKELY TO INTENSIFY AND IMPROVE. ALREADY, TECHNOLOGY TRANSFER IS A NEGATIVE CRITERION IN THE SENSE THAT ITS ABSENCE FROM A MAJOR INVESTMENT PROPOSAL IS INCREASINGLY LIKELY TO MITGATE AGAINST THE ACCEPTANCE OF THE PROPOSAL, OR AT LEAST TO SUBJECT THE PROPOSAL TO MORE INTENSE SCRUTINY THAN WOULD OTHERWISE BE THE CASE. DETAILS OF REVIEW PROCEDURE: AT PRESENT, APPLICATIONS ARE RECEIVED BY THE INVESTMENT COMMISSION OF THE MINISTRY OF ECONOMIC AFFAIRS (MOEA) AND SENT BY THE COMMISSION TO THE MOEA DIVISION OR OTHER GORC DEPARTMENT JUDGED TO HAVE GREATEST INTEREST AND/OR SUBSTANTIVE EXPERTISE BY WHICH TO JUDGE THE PROPOSAL'S CONFORMITY TO DEVELOPMENTAL PRIORITIES AND POLICIES, THE LIKELY CONTRIBUTION TO NATIONAL GOWS IF SUCCESSFUL, AND FINANCIAL SOUNDNESS. FOR JOINT INVESTMENT PROPOSALS INVOLVING TECHNICAL COOPERATION/TECHNOLOGY TRANSFER, THE INDUSTRIAL DEVELOPMENT BOARD, THE INDUSTRIAL DEVELOPMENT AND INVESTMENT CENTER, AND THE INDUSTRIAL RESEARCH INSTITUTE AT A MINIMUM WOULD BE REQUESTED TO COMMENT. NATURE OF TECHNOLOGY CONTRIBUTION, COST AND PAYBACK TIME AND TERMS ARE MAJOR CRITERIA BY WHICH PROPOSAL IS EVALUATED. THE STATUTE FOR TECHNICAL COOPERATION REQUIRES THAT TECHNICAL SKILL AND PATENT RIGHTS "MEAN SUCH AS MAY ACHIEVE ONE OF THE PURPOSES SET FORTH HEREUNDER IN RELATION TO PRODUCTS OR SERVICES FOR DOMESTIC NEEDS OR FOR EXPORT SALE:

- A. PRODUCTION OR MANUFACTURING OF NEW PRODUCTS;
  - B. INCREASE OF THE VOLUME OF PRODUCTION, IMPOROVEMENT OF PRODUCT QUALITY OR REDUCTION OF PRODUCTION COST;
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C. IMPROVEMENT OF SKILL OF ADMINISTRATION, MANAGEMENT, DESIGN OR OPERATION, AND OTHER IMPROVEMENT."

THE CRITERIA THUS ARE VERY BROAD AND HIGHLY FLEXIBLE, AND EMBASSY'S IMPRESSION IS THAT EXAMINERS RELY GREATLY ON THEIR OWN EXPERIENCE AND THE WIDE DISCRETION THEY ARE GIVEN BY THE BASIC STATUTE.

AFTER COMMENTS HAVE BEEN RECEIVED AND CONSOLIDATED BY THE INVESTMENT COMMISSION, THE PROPOSAL IS SUBMITTED TO A 10-MAN INTERDEPARTMENTAL BOARD COMPOSED OF VICE-MINISTERIAL-LEVEL REPRESENTATIVES FROM INTERESTED AGENCIES, INCLUDING THE MINISTRIES OF FINANCE, ECONOMIC AND FOREIGN AFFARIS, COMMUNICATIONS, INTERIOR, CENTRAL BANK OF CHINA, AND PROVINCIAL AND MUNICIPAL GOVERNMENTS. FIANL DECISION-MAKING POWER REMAINS LEGALLY IN THE HANDS OF THE MINISTRIES AND OTHER AGENCIES REPRESENTED ON BOARD; I.E., VICE-MINISTERIAL BOARD REPRESENTATIVES EXERCISE ONLY SUCH POWER AS IS DELEGATED TO THEM IN EACH INSTANCE. MOST TECHNOLOGY TRANSFER/TECHNICAL ASSISTANCE PROPOSALS APPROVED HERE HAVE INVOLVED LICENSING RATHER THAN EQUIITY PURCHASE ARRANGEMENTS, AND PERCENTAGE OF SALES ROYALTIES

RATHER THAN FIXED SUMS. THIS SITUATION REFLECTS, AMONG OTHER THINGS, THE POLICY OF THE GROC. THE CRITERIA AND STANDARDS USED TO EVALUATE A PROPOSAL DO NOT APPEAR TO DIFFER SUBSTANTIVELY ACCORDING TO THE NATURE OF THE QUID PRO QUO. HOWEVER, THE DEGREE OF SCRUTINY EXERCISED BY GROC EXAMINERS AT BOTH BOARD AND WORKING LEVEL IS APT TO BE FAR GREATER IN CASES INVOLVING EQUITY CONSIDERATIONS OR FIXED-SUM PURCHASE THAN FOR PERCENTAGE-RETURN LICENSING. BY ITS OWN ADMISSION, THE GROC TENDS TO ASSUME THAT THE FIRMS INVOLVED IN A JOINT-VENTURE PROPOSAL WILL BE AWARE OF, AND IN THAT PROPOSAL DEMONSTRATE AWARENESS OF, THEIR MUTUAL VESTED INTEREST IN A FINANCIALLY-SOUND

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FM AMEMBASSY TAIPEI

TO SECSTATE WASHDC 2264

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ARRANGEMENT. CONSEQUENTLY, OFFICIAL EXAMINATION OF THE PROPOSAL IS APT TO CONCENTRATE MORE ON OVERALL EVIDENCE OF PROFESSIONAL COMPETENCE, CONFORMITY TO DEVELOPMENT POLICY, AND GENERAL PROSPECTS FOR FUTURE CONTRIBUTION TO GOVERNMENTAL GOALS THAN ON FINANCIAL ARRANGEMENTS. IN ADDITION, CENTRAL BANK EVALUATION, WHERE THE ELEMENT OF FISCAL SOUNDNESS WOULD TEND TO DOMINATE JUDGMENTS, APPEARS TO PLAY A SUBORDINATE ROLE TO THE EVALUATIONS OF INDUSTRIAL TECHNICIANS. HOWEVER, WHEN ADVANCED TECHNOLOGY IS INVOLVED, SUCH AN ARRANGEMENT MAY ENHANCE, RATHER THAN DECREASE LIKELIHOOD OF ACCURATE FINANCIAL JUDGMENT, INASMUCH AS THE RELEVANT EXPERIENCE OF TECHNICIANS IS LIKELY TO BE GREATER THAN THAT OF BANKERS. GREATEST LIKELIHOOD OF OVEREVALUATION OR BACKING OF UNSOUND PROPOSAL WOULD APPEAR TO LIKE IN AREAS OF ESOTERIC TECHNOLOGY WHERE GROC HAS LITTLE OR NO PRIOR EXPERIENCE AND FEW OR NO PERSONS QUALIFIED TO PASS JUDGMENT ON TECHNICAL MERITS AND PROBABLE COST-BENEFIT RELATIONS. HOWEVER, THE HIGH LEVEL OF EDUCATION AND UNUSUALLY GREAT CONCENTRATION OF MANAGERIAL AND TECHNICAL EXPERTISE (FOR A DEVELOPING COUNTRY)

TO BE FOUND HERE ALREADY TENDS TO MINIMIZE THIS DANGER.  
OTHER FACTORS WORKING IN THE SAME DIRECTION ARE  
(1) THE LEGAL REQUIREMENT FOR SUBMISSION OF ANY AGREEMENTS OF  
LIKE NATURE ARRIVED AT IN OTHER COUNTRIES AND PROOF THAT  
TERMS AND CRITERIA PROPOSED ARE  
COMPARABLE; (2) REFERRALS TO OUTSIDE CONSULTANTS WHERE  
MINISTERIAL EXPERTISE IS CONSIDERED INADEQUATE;  
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(3) EXPOSURE OF ALL MAJOR PROPOSALS TO HIGH-LEVEL GROC  
SCRUTINY; (4) SELF-RECOGNIZED VESTED INTEREST OF GROC IN NOT  
ENCOURAGING FINANCIALLY UNSOUND VENTURES LIKELY TO DAMAGE  
ITS EXPORTCOMPETITIVENESS OR ABILITY TO ATTRACT  
FURTHER CAPITAL INVESTMENTS; (5) AND CONSERVATIVE CREDIT POLICIES  
OF BANKS.

2. CONTRIBUTIONS IN KIND. GROC APPEARS TO EXAMINE RATHER  
CAREFULLY COSTS OF CONTRIBUTIONS IN KIND. IN CASE OF NEW  
MACHINERY, CIF INVOICE FIGURES ARE THE STANDARD CRITERION  
FOR EVALUATION. FOR USED MACHINERY, INDQENDENT SURVEYORS  
(INTERNATIONAL AGENCIES) ARE RELIED ON, THE USUAL CRITERION BEING  
BOOK VALUE FOR TAX PURPOSES IN THE COUNTRY OF ORIGIN. THE  
STANDARDS ARE THE SAME WHETHER CONTRIBUTIONS IN KIND ARE MADE  
FOR EQUITY OR FOR CASH. PROCEDURES AND CRITERIA BOTH  
APPEAR TO BE PROFESSIONAL, WITH GREATEST DANGER OF DISTORTION  
LIKELY TO OCCUR AS RESULT OF COLLUSION BETWEEN SURVEYOR AND  
SUPPLIER OR AT FRONTIERS OF TECHNOLOGY RATHER THAN AS A  
RESULT OF NORMAL PROCEDURAL OR STANDARDS NADEQUACIES.

3. COPIES OF REQUESTED INVESTMENT REGULATIONS ARE BEING  
POUCHED SEPARATELY.

4. A CURRENT SOURCE OF COMPLAINT IN THE AMERICAN BUSINESS  
COMMUNITY INVOLVES JUDGEMENTS BY THE GROC AS TO WHETHER  
SPECIFIC AGREEMENTS QUALITY AS TECHNOLOGY TRANSFERS FOR TAX  
EXEMPTION PURPOSES. MOEA MUST CERTIFY THAT AGREEMENT  
MEETS LEGAL CRITERIA OF SKILL OR TECHNOLOGY TRANSFER BEFORE  
TAXATION PEOPLE WILL GRANT EXEMPTION. A MUCH MORE  
SERIOUS QUESTION IS ADEQUACY OF PATENT PROTECTION. GROC  
LAW, IN VIEW OF MANY AMERICAN FIRMS PROVIDES INADEQUATE  
PROTECTION FOR PATENTING OF PROCESSES (AS DISTINCT FROM DEVICES),  
PARTICULARLY IN THE FILED OF PETROCHEMICALS, AND DECISIONS  
WITHDRAWING PROTECTION, RECENTLY MADE BY BUREAU OF STANDARDS,  
ARE CONSIDERED ARBITRARY AND LACKING IN SPECIFIC JUSTIFICATION.  
THEY ARE LIKELY TO ENDANGER SIMILAR AGREEMENTS IN OTHER NATIONS  
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BY ESTABLISHING ADVERSE PRECEDENT WHICH BECAUSE OF VAGUENESS  
ALLOWS NO COME-BACK OR DISCRIMINATION OF CIRCUMSTANCES.  
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## Message Attributes

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